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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,904	09/28/2001	J. G. Walacavage	200-0665	4251

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EXAMINER

PROCTOR, JASON SCOTT

ART UNIT	PAPER NUMBER
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2123

MAIL DATE	DELIVERY MODE
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05/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/965,904	Applicant(s) WALACAVAGE ET AL.	
	Examiner Jason Proctor	Art Unit 2123	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


PAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that "Banks lacks constructing a flowchart that describes interaction of an operator in a workcell using a computer wherein such interaction comprises sequential operations and asynchronous operations and modeling the operator as an input to a programmable logic controller (PLC) by writing a control model of the operator interaction in the workcell based on predefined conditions described in the flowchart." The rejection is based upon a combination of references under 35 USC 103.

Applicants argue that "Banks also lacks testing the control model by a PLC logical verification system on the computer as to whether PLC logic for the workcell is correct and loading the PLC logic in the PLC controlling the workcell if the PLC logic for the workcell is correct." The rejection is based upon a combination of references under 35 USC 103. Further Applicants' attention is respectfully drawn to Banks, page 539, "Control Systems," where Banks explicitly teaches a PLC controlling a workcell, simulating the PLC algorithms, and directly testing the PLC code for correctness.

Applicants argue that "[In Schruben, t]he (random) time required to repair a jammed machine is modeled as a discrete or time based event because it is denoted by 't' and, therefore, cannot be an asynchronous operation." Applicants arguments are not supported by either a dictionary definition of "asynchronous" nor the disclosure of the application. The word "asynchronous" is found in the specification only at page 3-4, described as "interrupt or exception behavior where the operator responds to asynchronous requests for the workcell." Where Schruben teaches an operator "freeing a jammed machine," an event which occurs at random times throughout the simulation, Schruben is clearly teaching what Applicants have described at pages 3-4 of the specification using the term "asynchronous".

Applicants argue that "In Schruben, an operator may be responsible for loading and unloading parts that are processed by a machine as well as freeing a jammed machine, but this operator interaction is not modeled by a flowchart." The Examiner respectfully submits that Applicants have misconstrued the teachings of the Schruben reference, particularly section 3.3 in the context of the entire reference. Applicants argue that "Further, there is no modeling of an operator as an input to a programmable logic controller (PLC). As such, there is no suggestion or motivation in the art to combine Banks and Schruben together." Applicants are once again reminded that the rejection is based upon a combination of references under 35 USC 103. Schruben clearly teaches modeling an operator as input to manufacturing equipment to handle parts. Banks clearly teaches a PLC controller in a material handling system.

Applicants argue that "In Schruben, discrete event simulations are used for time dependent events and do not allow for asynchronous operations, which are not time dependent." Applicants may overcome the Schruben reference's description of randomly occurring events by amendments to the claim language that explicitly exclude any "time dependence" for "asynchronous operations." The Examiner is unaware of any dictionary definition for the term "asynchronous" or support in the specification for that interpretation.

Applicants' arguments presented in the 19 April 2007 Amendment After Final Rejection substantially reiterate the arguments submitted on 30 November 2006. The Examiner has attempted to clarify to the extent possible his position in this Advisory Action. All of Applicants' arguments have been fully considered, but have been found unpersuasive primarily for the reasons set forth above. The Examiner maintains that the combination of the Banks and Schruben references teach every claimed element, and that the combination of references is proper in light of *Graham v. Deere*. The Examiner encourages Applicants to provide a deliberate definition for the term "asynchronous" as supported by either the specification or as found in a dictionary.